

REMARKS

1. In response to the Office Action mailed February 2, 2009, Applicants respectfully request reconsideration. Claims 1-14 and 17-23 were last presented for examination. In the outstanding Office Action, claims 1-14 and 17-23 were rejected. By the foregoing Amendments, claims 1, 2 and 9-12 have been amended. Claims 26-29 have been added and claim 5 has been cancelled. No new matter has been added. Upon entry of this paper, claims 1-4, 6-14, 17-23 and 26-29 will be pending in this application. Of these twenty-four (24) claims, one (1) claim (claim 1) is independent.

2. Based upon the above Amendments and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

Priority Claim

3. Applicants note with appreciation the Examiner's acknowledgement of foreign priority under 35 U.S.C. §119 and for acknowledging that the certified copy of the priority document has been received from the International Bureau.

Objection to the Specification

4. The Examiner objected to the specification for failing to include a reference to related application(s). Applicants have amended the specification above to insert a Related Applications section immediately after the title to accommodate this objection. Reconsideration and withdrawal of this objection is respectfully requested.

Double Patenting

5. Claims 1-14 and 17-23 are provisionally rejected for nonstatutory obviousness-type double patenting over claims 1 and 21-24 of co-pending U.S. Patent Application No. 10/825,359. Applicants request that the Examiner reconsider and withdraw the double patenting rejection in light of the amendments above and the amendments in the co-pending Application No. 10/825,359.

Claim Rejections under §102

6. Claims 1-14 and 17-23 are rejected under 35 U.S.C. 102(a,c) as allegedly being anticipated by U.S. Patent No. 6,730,015 to Schugt *et al.* (hereinafter, “Schugt”). Applicants respectfully requests reconsideration and withdrawal of this rejection for at least the following reasons.

7. Applicants’ independent claim 1, as amended, recites, **“the at least one flange is bendable by hand so that at least a portion of the at least one flange is configured to fit flush against and securable to the tissue, and further wherein said flange is configured such that said housing is at least partially above a surface of the tissue when said flange is secured thereto.”** (*See*, Applicants’ independent claim 1, as amended above.) Applicants respectfully submit that Schugt does not disclose these limitations.

8. Schugt discloses a flexible element 20 connected at its first end 24 to a tube 31 which is attached to transducer 30. (*See*, Schugt, col. 6, ll. 27-28.) The flexible element 20 is connected at its second end 22 to a mounting plate 26 which is mounted to the implantee’s bone. (*See*, Schugt, col. 6, ll. 29-30.) The transducer is then stabilized in its desired location while glue used to adhere transducer 30 to the incus cures. (*See*, Schugt, col. 6, ll. 17-22.) After the glue cures, flange 20 is either removed altogether, or when flange 20 is made of a biocompatible metal, left inside the recipient. (*See*, Schugt, col. 6, ll. 46-60.)

9. The flange 20 of Schugt, however, is not “configured to fit flush against” the tissue. Rather, Schugt describes and illustrates that flange 20 is coupled to a mounting plate 26. (*See*, Schugt, FIG. 3.) Further, Schugt does not describe a flange that is “securable to the tissue.” Rather, in Schugt, the flexible element 20 is connected to a mounting plate 26, and it is the mounting plate 26 that is secured to the tissue, not the flexible element. (*See*, Schugt, col. 6, ll. 27-30.)

10. Applicants therefore respectfully asserts that Schugt fails to anticipate or render obvious “the at least one flange is configured to fit flush against and securable to the tissue,” as recited in Applicants’ independent claim 1, as amended above. Accordingly, Applicants respectfully request that the rejection be reconsidered and that it be withdrawn.

Dependent claims

11. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

Conclusion

12. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

13. Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicants reserve the right to pursue such claims in a continuation or divisional application.

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Respectfully submitted,

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